

KIRBY AISNER & CURLEY LLP
Proposed Substitute Attorneys for the Debtors
ERBO Properties LLC and Kova 521 LLC
700 Post Road, Suite 237
Scarsdale, New York 10583
Tel: (914) 401-9500
Erica R. Aisner, Esq.
eaisner@kacllp.com

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

ERBO PROPERTIES LLC, et. al.¹,

Debtors.

Chapter 11
Case No. 23-10210 (LGB)
Jointly Administered
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**APPLICATION FOR AN ORDER AUTHORIZING THE
RETENTION OF KIRBY AISNER & CURLEY LLP AS SUBSTITUTE
ATTORNEYS FOR DEBTORS ERBO PROPERTIES LLC AND
KOVA 521 LLC, EFFECTIVE AUGUST 3, 2023**

**TO: THE HONORABLE LISA BECKERMAN,
UNITED STATES BANKRUPTCY JUDGE:**

Debtors ERBO Properties LLC and Kova 521 LLC, by their Manager Eran Silverberg, files this application (the "Application") seeking an order, pursuant to 11 U.S.C § 327(a), authorizing the retention and employment of Kirby Aisner & Curley LLP ("KAC"), as their substitute attorneys, effective as of August 3, 2023, and respectfully sets forth and represents as follows:

BACKGROUND

1. On February 13, 2023, Erbo Properties LLC ("Erbo"), Gold Mezz LLC ("Gold Mezz") and KOVA 521, LLC ("Kova") (Erbo, Gold Mezz and Kova are collectively, the "Debtors"), each commenced its Chapter 11 case (the "Chapter 11 Cases") by filing a voluntary

¹ The Debtors are ERBO Properties LLC (EIN x9179), Case No.: 23-10210; KOVA 521, LLC (EIN x9972), Case No.: 23-10211, and Gold Mezz LLC (EIN x4741).

petition for relief in this Court under Chapter 11 of the Bankruptcy Code.

2. Pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code, the Debtors continue to operate as debtors-in-possession.

3. Erbo owns certain real property located at 541-545 West 21st Street, New York, NY (the “Property”) the development of which has been stalled under the prior management of the Debtors. Kova owns 100% of the equity interests in Erbo and Gold Mezz owns 100% of the equity interests in Kova.

4. By Order dated February 14, 2023, the Debtors’ Chapter 11 Cases are being jointly administered for procedural purposes only. [ECF No. 8].

JURISDICTION

5. This Court has jurisdiction over this Application pursuant to 28 U.S.C. §§ 157 and 1334. Venue of these proceedings is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

FACTS RELEVANT TO THE APPLICATION

6. By an Order entered on March 30, 2023, the Debtors’ retention of Tarter Krinsky & Drogin LLP (“TK&D”) as bankruptcy counsel was approved by the Court. [ECF No. 49].

7. On July 5, 2023, the Debtors filed an application to employ the Law Offices of Isaac Nutovic as the Debtors’ replacement bankruptcy counsel [ECF No. 114].

8. In the intervening period, 541 W 21 SME LLC (“SME”) obtained relief from the automatic stay to foreclose on the membership interests of Kova, which interests were pledged to secure a Mezzanine Loan made by SME to Gold Mezz. [See ECF Nos. 98 and 128]. The result of the granting of such relief is that at present, SME now controls Kova and by extension, its subsidiary, Erbo.

9. On July 26, 2023, TK&D filed a motion to withdraw as counsel to the Debtors, which motion is pending before the Court.

10. Erbo and Kova, under new management, now seek to engage new counsel to represent them in their Chapter 11 cases and specifically to undertake the necessary steps to propose an amended Chapter 11 plan that pays all allowed claims against the estates of Erbo and Kova and successfully conclude these cases.

RELIEF REQUESTED

11. By this application, Erbo and Kova seek authority to retain KAC as their substitute attorneys pursuant to Section 327(a) of the Bankruptcy Code to, among other things that they may direct, perform the following tasks:

- a. To give advice with respect to their powers and duties as Debtors-in-Possession and the continued management of their property and affairs;
- b. To appear before the Bankruptcy Court to protect and further their interests;
- c. To negotiate with their creditors, propose an amended plan of reorganization and disclosure statement, and take the necessary legal steps in order to obtain approval of the disclosure statement and effectuation of the plan;
- d. To advise with respect to any potential restructuring refinancing of secured debt, entering into any new financing transactions and any potential sale of the Property;
- e. To perform all other legal services which may be necessary for the preservation of their estates and to promote their best interests as well as that of the estates and their creditors.

12. Except as set forth in the annexed declaration of Erica Aisner (the “Aisner Declaration”), KAC did not perform any services for Erbo and Kova, other than consulting with each in connection with the engagement proposed in this Application.

13. Erbo and Kova seek to retain KAC because its attorneys have extensive experience representing Chapter 11 debtors and are well regarded as being both skilled, effective and efficient in carrying out such engagements.

14. Subject to this Court's approval, KAC will charge hourly for its legal services in accordance with its customary hourly rates for this type of matter and for its costs incurred as set forth in the Aisner Declaration, annexed as **Exhibit A**.

15. KAC shall apply to this Court for allowance of compensation and reimbursement of expenses in accordance with the applicable provisions of the Bankruptcy Code, the applicable Federal Rules of Bankruptcy Procedure, orders of this Court, and the Guidelines promulgated by the United States Trustee.

16. Erbo and Kova are satisfied that, (i) KAC does not hold or represent any interest adverse to them with respect to the matters for which it is being retained; (ii) KAC is a "disinterested person" as that phrase is defined in section 101(14) of the Bankruptcy Code; (iii) neither KAC nor its professionals have any connection with the Debtors, their estates, or their creditors; and (iv) KAC's employment is necessary and in the best interests of Erbo, Kova and their respective creditors and estates.

17. No application has been made for the relief requested herein to this or any other Court.

WHEREFORE, debtors Erbo and Kova respectfully requests that they be authorized to employ and appoint KAC to represent them as substitute counsel in these Chapter 11 Cases as of August 3, 2023 and that it be granted such other and further relief as is just and proper.

Dated: New York, New York
August 3, 2023

ERBO PROPERTIES LLC,
KOVA 521, LLC
Debtors

By: /s/ Eran Silverberg
Eran Silverberg, Manager